

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

«لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ،
وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ،
مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ، نَصِيبًا مَّفْرُوضًا ﴿٧﴾»
النساء ٧

*«For men is a share of what the parents
and close relatives leave, and for women
is a share of what the parents and close
relatives leave, be it little or much — an
ordained share (by Allāh).»*

[An-Nisā' 4:7]

الميراث : أحكام وعظات

Inheritance

Regulations & Exhortations

SECOND EDITION

مُحَمَّدُ الْجِبَالِي

MUHAMMAD AL-JIBĀLĪ

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PRELUDE

Opening Sermon

إِنَّ الْحَمْدَ لِلَّهِ، نَحْمَدُهُ وَنَسْتَعِينُهُ وَنَسْتَغْفِرُهُ، وَنَعُوذُ بِاللَّهِ مِنْ شُرُورِ أَنْفُسِنَا
وَمِنْ سَيِّئَاتِ أَعْمَالِنَا. مَنْ يَهْدِهِ اللَّهُ فَلَا مُضِلَّ لَهُ، وَمَنْ يَضِلَّ فَلَا هَادِيَ لَهُ.

Al-ḥamdu lillāh. Indeed, all praise is due to Allāh. We praise Him and seek His help and forgiveness. We seek refuge with Allāh from our souls’ evils and our wrong doings. He whom Allāh guides, no one can misguide; and he whom He misguides, no one can guide.

وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَحْدَهُ لَا شَرِيكَ لَهُ. وَأَشْهَدُ أَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ.

I bear witness that there is no (true) god except Allāh — alone without a partner, and I bear witness that Muḥammad (ﷺ) is His ‘*abd*’ (servant) and messenger.

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ حَقَّ تُقَاتِهِ،

وَلَا تَمُوتُنَّ إِلَّا وَأَنتُمْ مُسْلِمُونَ﴾ آل عمران ١٠٢

«O you who believe! Revere Allāh the right reverence, and do not die except as Muslims.»¹

﴿يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَحِدَةٍ، وَخَلَقَ مِنْهَا زَوْجَهَا، وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً، وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ، إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا﴾ النساء ١

«O people! Revere your Lord who has created you from a single soul, created from it its mate, and dispersed from both of them many men and women.

¹ Āl ‘Imrān 3:102.

This Book

Our goal in this book, which is the second in “The Inevitable Journey” series, is to present a comprehensive understanding of the “Islāmic Law of Inheritance” (*Ilm ul-Farā'id*), and to guide Muslims in writing a well-founded will.

Therefore, we reserve the first part of the book for studying the Islāmic Law of Inheritance. We lay down its textual foundation (Chapter 2), present its fundamental rules (Chapter 3), and provide numerous examples and case studies (mostly in Chapter 4). Among the reasons for this study are the following:

- 1) The Islāmic Law of Inheritance is an essential complement to the subject of will-writing. Both of them need to be considered when an estate is divided.
- 2) A good understanding of this law would enable Muslims to write well-founded wills, especially those living in non-Islāmic countries where the divine law of inheritance is not normally applied. This would make their will more precise and acceptable by the non-Muslim authorities, and would help limit unfairness in dividing the estate.
- 3) *Imāms*, executors, and other persons responsible for dividing an estate should have a basic knowledge of the Islāmic Law of Inheritance.
- 4) There is a clear need for an English reference and/or textbook on the subject of Islāmic inheritance for students of Islāmic studies.

We feel that this book, all praise is to Allāh, can serve all of the above purposes. In addition, guidelines and instructions for will-writing are fully covered in the last chapter, which is followed, in the appendices, by complete and ready-to-fill will forms.

The tables and diagrams in this book are all original and highly instructional, especially the chart of shares (p. 38), the flow-charts of male heirs (p. 34) and female heirs (p. 35), and the will (Appendix I) and other associated forms (Appendix II).

In this (second) edition of the book, we have corrected mistakes, that we discovered in the previous edition (which was titled “The Final Bequest”). Furthermore, we have added many examples of estate-division, rearranged the book to place more emphasis on the subject of inheritance, and made numerous cosmetic improvements all around.

To facilitate preparing a will, we have also published the will and other tables and forms in the appendices as a stand-alone booklet titled, “Islāmic Will & Testament”.

An Important Warning

Many situations and concepts discussed in this series (The Inevitable Journey) relate to *ghayb*¹. In dealing with such issues, we should apply the following important rules:

- a) Matters of *ghayb* that are mentioned in the Qur’ān and Sunnah should be fully accepted and believed in.
- b) The texts concerning *ghayb* have real meanings that are within human reason. Otherwise, Allāh would not have mentioned them to us. For example, the texts about *Jannah* describe trees, fruits, rivers, jewelry, clothing, and other things that are known to us. This gives us a general idea about what to expect there, even though we know that there is no comparison between the everlasting splendor of *Jannah* and the temporary glitter of this life.
- c) Unless there is authentic evidence to the contrary, *ghayb* issues should be understood and interpreted in accordance with the apparent meaning of the texts.
- d) Our reason is based on our experience in our physical world. Since *ghayb* relates to a world different from ours, our physical laws do not govern it. Therefore, we should not attempt to subject *ghayb* issues to such laws.

¹ *Ghayb* refers to all knowledge that is beyond the reach of human perception.

We ask Allāh, the Almighty, to guide the Muslims to His Book and to His Messenger's (ﷺ) Sunnah in all of their affairs. He is All-Hearing, All-Knowing.

Acknowledgements

All praise and thanks are due to our Lord (ﷻ) who facilitated completing this work. May He further reward all the Muslims who helped and supported this effort in various ways. In particular, may Allāh (ﷻ) reward my *shaykh* and teacher, Muḥammad Nāṣir ud-Dīn al-Albānī whose works have benefited us in ways beyond description, Rauf S. Azhar who reviewed the will forms with lawyers and provided valuable suggestions, my son 'Abdullāh al-Jibālī who designed the original cover of the first edition, and my daughters Ālā', Arwā, and Bushrā who proofread the manuscript.

We ask Allāh (ﷻ) to make this humble effort helpful and fruitful to the Muslims, forgive our shortcomings, purify our work from hypocrisy and conceit, and accept it from us.

Our Lord, forgive us and all of the believers, and bestow Your peace and praise upon our Prophet Muḥammad (ﷺ).

Muhammad al-Jibālī

Al-Madīnah al-Munawwarah

Friday, 9 Muḥarram 1426

18 February 2005

CHAPTER 1

INTRODUCTION

Inheritance Is Governed by Islām

Allāh (ﷻ) has provided us with a great guidance, Islām, that covers all aspects of our life. Since nothing can escape Allāh's knowledge and wisdom, Islām is a most complete code — not only in regard to private acts of worship and moral principles, but also in day-to-day dealings among people. It guides our steps in transactions and finance, it directs us in matters of earning and spending, and it even provides us with a systematic process for passing down our wealth from predecessor to successor.

Therefore, the way an inheritance is divided among heirs is a religious issue that Allāh (ﷻ) precisely determined in His revelation. Our obligation is to understand this issue so as to be able to implement it correctly. It is also an obligation on us to take the necessary steps to prevent misappropriating our estate after we die.

Our Financial Responsibility

WE ARE ACCOUNTABLE FOR OUR EARNING AND SPENDING

The material properties and other rights that we possess in this world are a trust from Allāh. During our lifetime, we are required to use them in the way that is most pleasing to our Lord (ﷻ).

On the Day of Judgement, Allāh (ﷻ) will surely hold us accountable for this trust. He will ask us about our wealth — how we earned it, and how we spent it.

Ibn Mas'ūd and Abū Burazah (رضي الله عنه) reported that Allāh's Messenger (ﷺ) said:

«لا تزولُ قدما ابن آدم يوم القيامة من عند ربه حتى يُسأل عن

you are healthy and short of funds, fearing poverty and hoping for wealth. Do not postpone it till, when your soul reaches your throat, you say, “Give so much to so-and-so, and so much to so-and-so. Verily, by then, so-and-so had already gotten so much.”¹

Thus, servant of Allāh, when you sit down to evaluate your estate or write your will, remember this, and think earnestly of things you can do with your wealth now that will benefit you after death.²

We ask Allāh to guide us and grant us righteousness, a good end, and death upon the testimony of Islām — *āmīn*.

¹ Recorded by al-Bukhārī, Muslim, and others.

² The reader is urged to read in this regard the chapter “Things that Benefit the Dead” from our book, “Life in *al-Barzakh*”, which is Part 4 of this series (The Inevitable Journey).

CHAPTER 2

TEXTS CONCERNING INHERITANCE

Introduction

In this chapter, we cite texts from the Qur’ān and Sunnah that deal with inheritance, following each citation with a brief commentary. These largely provide the textual foundation for the rules of inheritance, which are discussed in the next chapter.

For our subsequent discussions, we define “legal heir” as an heir to whom the Islāmic Law of Inheritance gives a portion of the deceased’s estate. Legal heirs are normally “standard” (parents, offspring, siblings, and spouses). In the absence of enough standard heirs to cover the whole estate, the unclaimed part may go to “non-standard” heirs (relatives through female lineage).

The Estate Goes to the Legal Heirs

The estate of a deceased goes to the heirs that have been legally indicated in the Islāmic law. The Islāmic state has no right to any part of it, except in the rare situation where the deceased was not survived by any relatives — near or distant. Allāh (ﷻ) says:

﴿لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ، وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ، مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ، نَصِيبًا مَّفْرُوضًا﴾ النساء ٧

«For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or

EXAMPLE

A deceased is survived by a maternal uncle, two daughters of full sisters, and two daughters of maternal sisters. The solution is as follows:

Heir	Substituting for	6 7
M. uncle	Mother ($\frac{1}{6}$)	1
F. sister's daughter	F. sister ($\frac{1}{3}$)	2
F. sister's daughter	F. sister ($\frac{1}{3}$)	2
M. sister's daughter	M. sister ($\frac{1}{6}$)	1
M. sister's daughter	M. sister ($\frac{1}{6}$)	1

EXAMPLES AND COMPUTATIONS**Introduction**

The examples in this chapter are relatively simple, but they should cover or resemble most common inheritance cases. These, together with the concepts and examples that we introduced in the previous chapter, should make it possible to deal with more complicated cases.

In the following examples, “R” is the estate’s remainder after giving all shares that are explicitly prescribed in the Qur’ān and Sunnah. We also use other symbols and abbreviations that have been defined in the previous chapter (pp. 36-38, 41).

Each of the following sections (except for *‘Awal*) is divided into two subsections: annotated cases, and cases solved using the window method. The examples in the two subsections are usually different, but may sometimes be repeated.

Finding the base and individual shares from individual ratios is a process that requires a reasonable ability in dealing with fractional numbers and performing arithmetic computations. The readers should either be able to perform these computations by themselves, or find help in performing them.

Simple Prescription Cases**ANNOTATED EXAMPLES**

1.

Heir	Share	Notes
Husband	$\frac{1}{4}$	By prescription
Son	$\frac{3}{4}$	By prescription (or <i>ta’sīb</i>)